



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1259]

Certain Toner Supply Containers and Components Thereof (I)

Notice of Commission Final Determination Finding a Violation of Section 337; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission

(“Commission”) has found a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a general exclusion order (“GEO”) prohibiting the importation of certain infringing toner supply containers and components thereof, as well as cease and desist orders (“CDOs”) against certain defaulting respondents. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, “Complainants”). *See* 86 FR 19284-86. The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after

importation into the United States of certain toner supply containers and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,209,667 (“the ’667 patent”); 10,289,060 (“the ’060 patent”); 10,289,061 (“the ’061 patent”); 10,295,957 (“the ’957 patent”); 10,488,814 (“the ’814 patent”); 10,496,032 (“the ’032 patent”); 10,496,033 (“the ’033 patent”); 10,514,654 (“the ’654 patent”); 10,520,881 (“the ’881 patent”); 10,520,882 (“the ’882 patent”); 8,565,649; 9,354,551; and 9,753,402. *Id.* The complaint further alleges that a domestic industry exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of toner supply containers and components thereof by reason of infringement of certain claims the ’667 patent, the ’060 patent, the ’061 patent, the ’957 patent, the ’814 patent, the ’032 patent, the ’033 patent, the ’654 patent, the ’881 patent, and the ’882 patent (collective, “the Asserted Patents”). *Id.*

The notice of investigation (“NOI”) names twenty-six respondents, including twenty-two later found in default: (1) Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”) of Sichuan, China; (2) Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”) of Sichuan, China; (3) Copier Repair Specialists, Inc. (“Copier Repair Specialists”) of Lewisville, Texas; (4) Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”) of Los Angeles, California; (5) Ink Technologies Printer Supplies, LLC (“Ink Tech”) of Dayton, Ohio; (6) Kuhlmann Enterprises, Inc. d/b/a Precision Roller (“Precision Roller”) of Phoenix, Arizona; (7) NAR Cartridges of Burlingame, California; (8) Zhuhai Henyun Image Co., Ltd. (“Zhuhai Henyun”) of Zhuhai, China; (9) Zinyaw LLC d/b/a TonerPirate.com and Supply District (“Zinyaw”) of Houston, Texas; (10) Do It Wiser, Inc. d/b/a Image Toner (“Do It Wiser”) of Wilmington, Delaware; (11) MITOCOLOR INC. (“MITOCOLOR”) of Rowland Heights, California; (12) Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”) of Ganyuqu, China;

(13) ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”) of SiChuanSheng, China; (14) Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”) of Chengdushi, China; (15) Xianshi yanliangqu canqiubaihuodianshanghang (“CJ-us”) of Shanxisheng, China; (16) Ninestar Corporation of Guangdong, China; (17) Ninestar Image Tech Limited (“Ninestar Image”) of Guangdong, China; (18) Ninestar Technology Company, Ltd. (“Ninestar Tech”) of Chino, California (where Ninestar Corporation, Ninestar Image, and Ninestar Tech are collectively, “Ninestar Respondents”); (19) Static Control Components, Inc. (“Static Control”) of Sanford, North Carolina; (20) Easy Group, LLC (“Easy Group”) of Irwindale, California; (21) LD Products, Inc. (“LD Products”) of Long Beach, California; and (22) The Supplies Guys, Inc. (“Supplies Guys”) of Lancaster, Pennsylvania; (collectively, “Defaulting Respondents”). *Id.* The NOI also names the following respondents who were previously terminated from the investigation: General Plastic Industrial Co. Ltd. (“General Plastic”) of Taichung, Taiwan; Katun Corporation (“Katun”) of Minneapolis, Minnesota; Sun Data Supply, Inc. (“Sun Data Supply”) of Los Angeles, California; and Shenzhenshi Keluodeng Kejiyouxiangognsi (“KenoGen”) of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The complaint and NOI were later amended to correct the name of originally-identified respondent Do It Wiser, LLC d/b/a Image Toner to Do It Wiser, Inc. d/b/a Image Toner. Order No. 5 (May 13, 2021), *unreviewed by* 86 FR 29292-93 (June 1, 2021).

The Commission previously found the Ninestar Respondents, Static Control, Easy Group, LD Products, and Supplies Guys in default. Order No. 7 (June 22, 2021), *unreviewed by* Notice (July 6, 2021). The Commission also previously found respondents Sichuan XingDian, Sichuan Wiztoner, Copier Repair Specialists, Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, Zhuhai Henyun, Zinyaw, Do It Wiser, MITOCOLOR, Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us in default. Order No. 18 (Sept. 28, 2021), *unreviewed by* Notice (Oct. 27, 2021).

The Commission previously terminated respondents General Plastic, Katun, and Sun Data Supply from the investigation pursuant to consent order stipulations. Order No. 10 (July 1, 2021), *unreviewed by* Notice (July 19, 2021). The Commission further terminated respondent KenoGen from the investigation based on partial withdrawal of the complaint. Order No. 13, *unreviewed by* Notice (Aug. 25, 2021).

The Commission also previously terminated investigation as to certain claims of the Asserted Patents. Order No. 11, *unreviewed by* Notice (Aug. 25, 2021).

On October 1, 2021, Canon filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the ALJ recommend that the Commission issue a GEO and CDOs against certain respondents, and set a 100 percent bond for any importations of infringing goods during the period of Presidential review. On October 12, 2021, OUII filed a response supporting Canon's motion and requested remedial relief. None of the Defaulting Respondents filed a response to Canon's motion.

On May 15, 2022, the presiding Chief Administrative Law Judge ("CALJ") issued an initial determination ("ID") granting Canon's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) the Commission has subject matter, personal, and in rem jurisdiction in this investigation; (ii) Canon has standing to assert the Asserted Patents; (iii) Canon has satisfied the importation requirement as to all Defaulting Respondents; (iv) the accused products practice claim 1 of the '667 patent; claim 1 of the '060 patent; claim 1 of the '061 patent; claim 1 of the '957 patent; claims 1 and 12 of the '814 patent; claims 50, 58, and 61 of the '032 patent; claims 1 and 13 of the '033 patent; claims 46 and 50 of the '654 patent; claims 1, 10, and 13 of the '881 patent; and claims 1 and 8 of the '882 patent; (v) Canon has satisfied the technical prong of the DI requirement with respect to the Asserted Patents; (vi) Canon has satisfied the economic prong of the DI requirement with respect to the Asserted Patents; and (vii) no claim of the Asserted Patents has been shown invalid. The CALJ's recommended determination on remedy and bonding recommended that

the Commission: (i) issue a GEO, (ii) issue CDOs against respondents Ninestar Tech, Static Control, Copier Repair Specialists, Digital Buyer, Do It Wiser, Easy Group, Ink Tech, Precision Roller, LD Products, NAR Cartridges, Supplies Guys, MITOCOLOR, Zinyaw, Ninestar Corporation, Ninestar Image, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang, and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review. No party petitioned for review of the subject ID.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission received one submission on the public interest from a member of the public in response to the Commission's *Federal Register* notice. 87 FR 16230-31 (March 22, 2022).

On April 29, 2022, the Commission determined to review the ID in part. 87 FR 26783-85 (May 5, 2022). Specifically, the Commission determined to review the ID's findings with respect to whether terminated respondent Sun Data Supply has satisfied the importation requirement and the ID's analysis of the economic prong of domestic industry requirement. *Id.* The Commission further requested briefing on remedy, bonding, and the public interest. *Id.*

On May 13, 2022, Canon and OUII filed initial written responses to the Commission's request for briefing. On May 19, 2022, OUII filed its reply submission. On May 20, 2022, Canon filed its reply submission.

Having reviewed the record of the investigation, including the ID and Canon's and OUII's submissions, the Commission has found a violation of section 337 with respect to Defaulting Respondents. The Commission vacates the ID's findings with respect to whether terminated respondent Sun Data Supply has satisfied the importation requirement. The Commission affirms, with modified analysis, the ID's findings that the economic prong of the domestic industry requirement has been satisfied under section 337(a)(3)(A) and (B). *See* 19 U.S.C. 1337(a)(3)(A), (B). (Commissioner Kearns finds the economic prong satisfied under

section 337(a)(3)(A) and takes no position with respect to section 337(a)(3)(B)). (Commissioner Stayin does not join the Commission's analysis, but joins the Commission's determination that Canon has satisfied the economic prong of the domestic industry requirement.) The Commission also corrects two typographical errors on pages 71 and 80 of the ID, as explained in the Commission's opinion.

The Commission has determined that the appropriate remedy in this investigation is:

(1) a GEO prohibiting the unlicensed entry of certain toner supply containers and components thereof that infringe one or more of claim 1 of the '667 patent; claim 1 of the '060 patent; claim 1 of the '061 patent; claim 1 of the '957 patent; claims 1 and 12 of the '814 patent; claims 50, 58, and 61 of the '032 patent; claims 1 and 13 of the '033 patent; claims 46 and 50 of the '654 patent; claims 1, 10, and 13 of the '881 patent; or claims 1 and 8 of the '882 patent; and

(2) CDOs against Ninestar Tech, Static Control, Copier Repair Specialists, Digital Buyer, Do It Wiser, Easy Group, Ink Tech, Precision Roller, LD Products, NAR Cartridges, Supplies Guys, MITOCOLOR, Zinyaw, Ninestar Corporation, Ninestar Image, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang. The Commission finds that the public interest factors do not preclude issuance of the requested relief. *See* 19 U.S.C. 1337(d)(1), (f)(1), (g)(1). The Commission has also determined that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the Accused Products that are subject to the GEO and CDOs. *See* 19 U.S.C. 1337(j).

The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's opinion and orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is terminated.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules

201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on August 1, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 1, 2022.

Katherine Hiner,
Acting Secretary to the Commission.

[FR Doc. 2022-16788 Filed: 8/4/2022 8:45 am; Publication Date: 8/5/2022]